IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 451 of 2007

RANVEER SINGH KASWAN
V/S
STATE & ORS.

Mr. DINESH MEHTA, for the appellant / petitioner

Mr. SANGEET LODHA, for the respondent

Date of Order : 7.3.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the parties.

The matter was heard at length on 1st of March 2007, and was heard for quite some time today also.

The precise contention of the learned counsel for the petitioner is that the goods were not in movement even within the meaning of the explanation to Section 76(2) of the Rajasthan VAT Act, 2003, and therefore, the entire proceedings initiated against the petitioner are wholly without jurisdiction, as against which, the substance of the submission of the learned counsel for the respondent is, that as the things have come out, even in Annex.1, and by subsequent investigation, that the goods were in movement, within the meaning of Section 76(2), and therefore, proceedings have rightly been initiated under Section 76.

Learned counsel for the petitioner submitted that

he had filed reply, Annex.3 on 22.12.2006 itself raising an objection that the goods were not in movement, and therefore, 76 proceedings are not maintainable, while learned counsel for the respondent submits that after seizure of all the goods, consequent upon investigation, notice Annex.R/6 (also Annex.11) has already been served on the petitioner, and one Shekhawati Transport Company, and according to the respondent, the petitioner is an agent of that transport company also, and the goods found were transported by Shekhawati Transport Company, and were only dumped at a place, where the petitioner carries on business of both the establishments.

In the totality of circumstances, in my view, it would not be appropriate for me to go into the question, as to whether the goods were in movement or not, as in view of the facts that have come on record of this writ petition, it would be appropriate for the authority concerned, being respondent No.3 to decide, as to whether the goods were in movement or not, and it will be open to the petitioner to substantiate his stand taken in Annex.3, that the goods were not in movement.

It is needless to say, that this much cannot be said to be a disputed legal position, that the proceedings under Section 76 can be taken only if the goods are in movement, and the parameters of “goods in movement” have been explained in the explanation appended to sub-section (2) of Section 76.

The authority being respondent No.3 shall, therefore, first decide the question, as to whether the goods were in movement or not, and in case the authority comes to the conclusion that the goods are not in movement, then the proceedings initiated shall be dropped and otherwise, the authority may proceed with the matter. This question shall be decided by the authority in the fist instance, and at the earliest, preferably within a period of two weeks.

Learned counsel for the petitioner submits that the goods are lying with the authority, and the petitioner is suffering loss. Suffice it to say that adequate protection had already been provided in this regard in sub-section (5) of Section 76 itself, and it is open to the person aggrieved to take resort to the provisions of sub-section (5). If application under sub-section (5) is moved, the authority will decide that also with utmost expeditiousness.

The writ petition is, therefore, dismissed with the aforesaid observations.

(N P GUPTA),J.

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